

REMARKS

I. Introduction

The foregoing amendment amends claims 1 and 2 to correct certain informalities in the claims. Upon entry of the amendment, claims 1-7 are pending in the application.

II. The Office Action is Improper

In the Office Action issued January 21, 2111 (the “Office Action”), the examiner alleged a new ground of rejection for claims 1-7. In particular, the examiner alleged that the claims are unpatentable over EPO Publication 0 443 919 (Parizel) in view of U.S. Pub. No. 2007/0050940 (“Lowen”). The Lowen application is a U.S. national stage application that was published on March 8, 2007.

On or about March 1, 2011 the undersigned contacted the examiner to discuss whether Lowen was a proper reference to use in a rejection of the claimed invention, given the relevant dates of the present application and the Lowen application. The examiner agreed that Lowen was not prior art.

The undersigned requested that the examiner withdraw the Office Action since the use of Lowen in the rejection of claims 1-7 was an error that affected the applicant’s ability to reply to the Office Action. The examiner declined to withdraw the Office Action and instead suggested that the applicant file a response. Applicant reiterates its request for withdrawal of the Office Action since Lowen is an improper basis for rejecting the claims.

Even if Lowen was a proper reference, the Office Action should not have been made final. The Office Action included a rejection that relied upon references different than those used in the previous office action. The Office Action did not address the merits of the arguments presented in the response filed on October 18, 2010 (the “Response”). It simply stated that the arguments presented in the Response were considered to be moot in view of the new ground(s) of rejection, indicating that the Response overcame the previous rejection. Since the new ground of rejection was

not necessitated by the applicant's amendment of the claims, the Office Action should have been a non-final office action. *See* MPEP 706.07(a).

III. Objection to Claim 2 and Rejection of Claims 1-7 under Section 112, Second Paragraph

The Office Action includes an objection to claim 2 and a rejection of claims 1-7 under 35 U.S.C. 112, second paragraph. The foregoing amendment corrects the informality in claim 2 and amends claim 1 to correct "check means" to "check body." The amendment to claim 1 also addresses the rejection of claims 2-7 under section 112 second paragraph.

It is requested that the examiner acknowledge the error in the Office Action and withdraw the Office Action. It is further requested that the examiner allow the application.

CONCLUSION

The Response is believed to be completely responsive to the Office Action. It is submitted that the application is in condition for allowance and a notice of allowance is respectfully requested.

EXCEPT for the issue fees payable under 37 C.F.R. § 1.18, the Director is authorized by this paper to charge any additional fees during the entire pendency of this application, including fees due under 37 C.F.R. §§ 1.16 and 1.17 that may be required, including any required extension of time fees, or credit any overpayment to Deposit Account Number 11-0855. This paragraph is intended to be a **CONSTRUCTIVE PETITION FOR EXTENSION OF TIME** in accordance with 37 C.F.R. § 1.136(a)(3).

If there are any matters that can be addressed by telephone, the Examiner is respectfully urged to contact the undersigned attorney at 404 685 6799.

Respectfully submitted,

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